IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.279 of 1993

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
KOLITHAD JUTH SEVA SAHKARI MANDLI LTD - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 22/09/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The following question has been referred by the Income-tax Appellate Tribunal, Ahmedabad Bench

'A', under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the Revenue:

> “Whether, the Appellate Tribunal is right in law and on facts in holding that the income of the assessee society is exempt under notification dated 22.12.1950 ?”

2. Mr.M.R.Bhatt, learned Senior Standing Counsel appears on behalf of the applicant-revenue. Though served, there is no appearance on behalf of the respondent.

3. The reference is for Assessment Year 1983-84. As can be seen from the impugned order of the Tribunal dated 11th March, 1992 it has relied on its own decision rendered in the case of another similarly situated assessee viz. Moti Marad Juth Vividh Karyakari Sahakari Mandli Limited as well as another order in the case of Shri Gopalgram Seva Sahakari Mandli Limited.

4. At the time of hearing the Court had put a query to Mr.Bhatt as to what has happened in the earlier matters, on which the Tribunal has

placed reliance. It was submitted that both in the cases of Moti Marad Juth Vividh Karyakari Sahakari Mandli Limited and Shri Gopalgram Seva Sahakari Mandli Limited reference applications filed by the Revenue came to be rejected under Section 256(1) of the Act by the Tribunal against which the Revenue had preferred application under Section 256(2) of the Act.

5. On going through the original records of this Court in Income Tax Application No.41 of 1985 in the case of Commissioner of Income-tax Vs. Moti Marad Juth Vividh Karyakari Sahakari Mandli Limited and Income Tax Application No.22 of 1988 in the case of Commissioner of Income-tax Vs. Shri Gopalgram Seva Sahakari Mandli Limited it is found that Income-tax Application No.41 of 1985 came to be rejected by this Court by order dated 12th November, 1990 and Income Tax Application No.22 of 1988 came to be rejected by this Court by order dated 17th November, 1990.

6. It further appears that the order in case of Moti Marad Juth Vividh Karyakari Sahakari Mandli Limited attained finality while in the case of Shri Gopalgram Seva Sahakari Mandli Limited the Revenue carried the matter in appeal before the Apex Court. By an order dated 12th August, 1996 made in Civil Appeal No.10652 of 1996 the Apex Court allowed the appeal and directed the Tribunal to refer two questions.

7. Therefore, the Revenue was granted time to ascertain as to what has happened in the said matter. It is submitted that despite all efforts the revenue has not been able to find out as to whether any reference was in fact made and if so, whether the same has been heard and disposed of or is pending.

8. Therefore, in the aforesaid circumstances, the present reference is left unanswered considering the fact that the applicant-revenue is not in a position to state with certainty as to what has

happened in the earlier matter on which the Tribunal has placed reliance while deciding the present matter. It is also necessary to note that the Tribunal had followed two orders of its own in the case of two different assessees and in case of Moti Marad Juth Vividh Karyakari Sahakari Mandli Limited, the matter has attained finality at the stage of rejection under Section 256(2) of the Act.

9. In the result, the reference is left unanswered and the same is returned accordingly. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**